

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 : NO. 03-M-857
 :
 :
JOAQUIN FOY :

v.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
CONCERNING COMPETENCY OF DEFENDANT TO STAND TRIAL

EDUARDO C. ROBRENO

FEBRUARY 7, 2005

I. INTRODUCTION

Defendant Joaquin Foy was charged in a Complaint on September 30, 2004 with threatening a United States official with intent to retaliate against such official on account of the performance of official duties, in violation of 18 U.S.C. § 115(a)(1)(B). Presently before the Court is the question whether Defendant is competent to stand trial pursuant to 18 U.S.C. § 4241. For the reasons set forth below, the Court finds the defendant incompetent to stand trial.

I. FINDINGS OF FACT

1. This Court accepted the transfer of probation jurisdiction of the defendant on June 13, 2003. (On March 3, 2003, the defendant was placed on 30 months probation for threatening to assault and to murder the Assistant United States Attorneys and Special Assistant United States Attorneys then

assigned to the Brownsville, Texas, United States Attorney's Office, with the intent to intimidate and to retaliate against said federal law enforcement officers while said officers were engaged in, and on account of the performance of said officer's official duties.)

2. In October of 2003, the defendant was arrested for violating his probation by threatening an employee of the Social Security Administration. The threats against the Social Security Administration employee were also the subject of a criminal Complaint, which remains pending against the defendant.

3. On October 6, 2003, the Magistrate Judge ordered a psychiatric evaluation of the defendant.

4. On October 24, 2003, Magistrate Judge Jacob P. Hart found the defendant incompetent and committed him to the custody of the Attorney General pursuant to 18 U.S.C. §4241(d), for a competency evaluation.

5. The defendant was admitted to the Federal Medical Center at Butner, North Carolina ("FMC Butner") on November 17, 2003 for an evaluation pursuant to 18 U.S.C. § 4241(d).

6. Staff Psychiatrist of the Mental Health Department at FMC Butner, Ralph Newman, M.D., has dealt personally with the defendant during the defendant's stay at FMC Butner since November, 2003. Dr. Newman is an expert in forensic psychiatry and in competency standards in federal law.

7. On November 21, 2003, FMC Butner authorities issued a report of the findings of a Forensic Evaluation of the defendant, signed by Dr. Newman and by Edward E. Landis III, Ph.D., Director of Psychology Training. The defendant was diagnosed in the report with severe Bipolar Disorder, the most recent episode being Manic. The report concluded that the defendant was incompetent to stand trial based on his inability to conform his behavior to Court procedure. The report, however, concluded that the defendant's competence could be restored with a period of treatment with mood stabilizers and/or antipsychotic medication.

8. On February 20, 2004, a hearing to determine whether the defendant should be involuntarily medicated was held. However, before the Court made any decision on that issue, the FMC Butner authorities determined that involuntary medication was warranted on administrative grounds. The defendant received his first dosage of involuntary medication on March 25, 2004.

9. On April 28, 2004, FMC Butner authorities submitted a Status Update concerning the defendant signed by Drs. Newman and Landis. The Status Update reported that the defendant's mental status remained unchanged from the medication. The Status Update reported that the defendant remains incompetent to proceed to trial.

10. On July 30, 2004, FMC Butner authorities submitted another Forensic Evaluation of the defendant to the Court. The July 30, 2004 Forensic Evaluation, signed by Drs. Newman and Landis, advised the Court that with medication, the defendant's competency had been restored to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense.

11. On August 3, 2004, the Court held a competency hearing in which the defendant participated by video conference. Dr. Newman was also present by video conference. The defendant's behavior at the hearing raised questions regarding whether his competency had in fact been restored, and on October 18, 2004, the Court ordered that he be re-evaluated.

12. On November 19, 2004, FMC Butner authorities submitted a Forensic Update with Addendum to the Court. The defendant's diagnosis continued to be severe Bipolar Disorder, the most recent episode being manic. The Forensic Update reported that the defendant's competence to stand trial has deteriorated to the extent that he is neither competent to stand trial, nor is there a substantial probability that his competency will be restored in the foreseeable future. The Forensic Update further reported that the defendant is noted to deteriorate under the increase of stress and stimulation brought on by court proceedings.

13. On February 4, 2005, this Court held a hearing at which the government presented the testimony of Dr. Newman by videoconference. (The defendant declined to attend after having been advised by Dr. Newman that the hearing was taking place and that its purpose was for the Court to make a competency finding.) Defense counsel participated in the hearing.

II. CONCLUSIONS OF LAW

1. Pursuant to 18 U.S.C. § 4241(d), following a competency hearing a defendant is deemed incompetent to stand trial if the district court "finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

2. The requirements of 18 U.S.C. § 4241(d) have been fulfilled as to the defendant. He has been hospitalized for a reasonable period of time and treated with psychotropic medication in the belief that he would attain the capacity to permit the matters pending against him to proceed. However, his condition has not improved to that extent, and there is no substantial probability that his competency will be restored in the foreseeable future.

3. Title 18, United States Code, Section 4246, sets forth the procedure for the director of FMC Butner to follow in light of the failure to restore the defendant's competency. First, FMC Butner authorities must determine whether the defendant "is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another." 18 U.S.C. § 4246(a).

- A. If the authorities determine that the defendant has such a mental disease or defect, they must so certify to the clerk of this Court, to the clerk of the court for the district in which the defendant is confined (the Eastern District of North Carolina), to the defendant, and to the attorney for the government. Procedures for commitment of the defendant will then proceed, including a hearing before the Court with respect to the danger assessment.
- B. If the FMC Butner authorities determine that the defendant's release would not create a substantial risk of bodily injury to another person or serious damage to the property of another, they must so certify to this Court, pursuant to 18 U.S.C. § 4246(e), as well as to the attorneys for the

government and the defendant. Section 4246(e) sets forth the procedures to be followed by the Court in that event.

4. Proceedings to date in this case, and the future proceedings outlined in 18 U.S.C. § 4241 et seq. comport with defendant's rights under the due process clause of the Fourteenth Amendment and the speedy trial act.

III. CONCLUSION

Based on the foregoing findings of fact and conclusions of law, the Court finds by a preponderance of the evidence that the defendant is incompetent to stand trial in that he is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Further, the Court finds by a preponderance of the evidence that there is no substantial probability that the defendant's competency will be restored in the foreseeable future.

An appropriate order follows.

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ORDER

AND NOW, this **7th** day of **February, 2004**, pursuant to the accompanying findings of fact and conclusions of law, it is hereby **ORDERED** that Defendant Joaquin Foy is incompetent to stand trial and there is no substantial probability that his competency will be restored in the foreseeable future.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.